



1995 ASSEMBLY BILL 377

May 18, 1995 - Introduced by Representative VRAKAS, cosponsored by Senators HUELSMAN and DARLING. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.357 (1) and 48.357 (2m); and **to create** 808.07 (2m) of the
2 statutes; **relating to:** staying the execution or enforcement of an order
3 changing the placement of a child pending final resolution of an appeal of that
4 order.

Analysis by the Legislative Reference Bureau

Under current law, an appeal of a trial court order does not stay the execution or enforcement of the order appealed from unless the trial court or an appellate court, in its discretion, stays execution or enforcement of the order during the pendency of the appeal. This bill requires a court assigned to exercise jurisdiction under the children's code (juvenile court) or an appellate court to stay execution or enforcement of an order of the juvenile court changing the placement of a child who has been found to be in need of protection or services and who has been placed in the home of a foster parent or treatment foster parent for 2 or more years if the foster parent or treatment foster parent appeals that change in placement. Under the bill, the juvenile court or appellate court must grant the stay, which lasts until final disposition of the appeal, unless the juvenile court finds that the child is in immediate danger from his or her surroundings in the home of the foster parent or treatment foster parent and that removal from those surroundings is necessary.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 48.357 (1) of the statutes is amended to read:

1 48.357 (1) The person or agency primarily responsible for implementing the
2 dispositional order may request a change in the placement of the child, whether or
3 not the change requested is authorized in the dispositional order and shall cause
4 written notice to be sent to the child or the child's counsel or guardian ad litem,
5 parent, foster parent, treatment foster parent, guardian and legal custodian. The
6 notice shall contain the name and address of the new placement, the reasons for the
7 change in placement, a statement describing why the new placement is preferable
8 to the present placement and a statement of how the new placement satisfies
9 objectives of the treatment plan ordered by the court. Any person receiving the notice
10 under this subsection or notice of the specific foster or treatment foster placement
11 under s. 48.355 (2) (b) 2. may obtain a hearing on the matter by filing an objection
12 with the court within 10 days of receipt of the notice. Placements shall not be
13 changed until 10 days after such notice is sent to the court unless the parent,
14 guardian or legal custodian and the child, if 12 or more years of age, sign written
15 waivers of objection, except that placement changes which were authorized in the
16 dispositional order may be made immediately if notice is given as required in this
17 subsection. In addition, a hearing is not required for placement changes authorized
18 in the dispositional order except where an objection filed by a person who received
19 notice alleges that new information is available which affects the advisability of the
20 court's dispositional order. If a hearing is held under this subsection and the change
21 in placement would remove a child from a foster home or treatment foster home, the
22 foster parent or treatment foster parent may submit a written statement prior to the
23 hearing. If the court orders a child to be removed from a foster home or treatment
24 foster home, the foster parent or treatment foster parent may appeal that order as
25 provided in s. 809.30. If a foster parent or treatment foster parent with whom a child

1 has been placed under s. 48.345 for 2 or more years appeals an order removing the
2 child from the foster home or treatment foster home, the court shall stay execution
3 or enforcement of that order until final disposition of the appeal, unless the court
4 finds that the child is in immediate danger from his or her surroundings in the foster
5 home or treatment foster home and that removal from those surroundings is
6 necessary.

7 **SECTION 2.** 48.357 (2m) of the statutes is amended to read:

8 48.357 (2m) The child, parent, guardian, legal custodian or any person or
9 agency primarily bound by the dispositional order, other than the person or agency
10 responsible for implementing the order, may request a change in placement under
11 this subsection. The request shall contain the name and address of the place of the
12 new placement requested and shall state what new information is available which
13 affects the advisability of the current placement. This request shall be submitted to
14 the court. In addition, the court may propose a change in placement on its own
15 motion. The court shall hold a hearing on the matter prior to ordering any change
16 in placement under this subsection if the request states that new information is
17 available which affects the advisability of the current placement, unless written
18 waivers of objection to the proposed change in placement are signed by all parties
19 entitled to receive notice under sub. (1) and the court approves. If a hearing is
20 scheduled, the court shall notify the child, parent, foster parent, treatment foster
21 parent, guardian, legal custodian and all parties who are bound by the dispositional
22 order at least 3 days prior to the hearing. A copy of the request or proposal for the
23 change in placement shall be attached to the notice. If all the parties consent, the
24 court may proceed immediately with the hearing. If a hearing is held under this
25 subsection and the change in placement would remove a child from a foster home or

1 treatment foster home, the foster parent or treatment foster parent may submit a
2 written statement prior to the hearing. If the court orders a child to be removed from
3 a foster home or treatment foster home, the foster parent or treatment foster parent
4 may appeal that order as provided in s. 809.30. If a foster parent or treatment foster
5 parent with whom a child has been placed under s. 48.345 for 2 or more years appeals
6 an order removing the child from the foster home or treatment foster home, the court
7 shall stay execution or enforcement of that order until final disposition of the appeal,
8 unless the court finds that the child is in immediate danger from his or her
9 surroundings in the foster home or treatment foster home and that removal from
10 those surroundings is necessary.

11 **SECTION 3.** 808.07 (2m) of the statutes is created to read:

12 808.07 (2m) CHANGE IN CHILD'S PLACEMENT; AUTOMATIC STAY. If a foster parent
13 or treatment foster parent appeals an order under s. 48.357 (1) or (2m) changing the
14 placement of a child who has been placed in the home of the foster parent or
15 treatment foster parent for 2 or more years under s. 48.345, the court assigned to
16 exercise jurisdiction under ch. 48 or an appellate court shall stay execution or
17 enforcement of that order until final disposition of the appeal, unless either court
18 finds that the child is in immediate danger from his or her surroundings in the home
19 of the foster parent or treatment foster parent and that removal from those
20 surroundings is necessary.

21 **SECTION 4. Initial applicability.**

22 (1) This act first applies to orders under section 48.357 (1) or (2m) of the
23 statutes, as affected by this act, granted on the effective date of this subsection.

24 **SECTION 5. Effective date.**

